

**REMARKS**

In response to the Official Action mailed February 16, 2006, Applicants submit the following amendments and remarks.

In the Official Action, the Examiner objects to the title of the invention. In response to this objection, Applicant has adopted the title suggested by the Examiner: Modular Polyaxial Bone Screw and Plate.

Claim 8 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicant regards as the invention. Specifically, the Examiner asserts that the limitation, "said fingers" in line 2 of claim 8 lacks an antecedent basis. In response to this objection, Applicants have amended claim 8 so as to depend from claim 3, thereby providing the correct antecedent basis for the phrase "said fingers".

**REJECTION - 35 U.S.C. §102 - SCHLUZAS**

Claims 25, 26 and 30-33 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication 2002/0143328 to *Schluzas, et al.* In response to this rejection, Applicant has amended claims 25 and 30 to include a recitation directed towards a positioning means and a positioner, respectively. The positioning means and/or positioner is moveable with respect to a bone fastener and also allows for the bone plate to be positioned at different locations, i.e., heights, relative to a vertebral body. This is because, as the bone fastener is positioned within the bone, the positioner or positioning means may be moved upwards or downwards along the bone fastener such that the spatial relationship of the bone plate and vertebral body may be adjusted as required. The positioner and positioning means may be moved with respect to

the bone fastener, that requiring the bone fastener to be further embedded in the vertebral body or slightly removed from the vertebral body. But the bone plate may still be adjusted relative to the vertebral body.

In contrast, *Schluzas* discloses an intermediate portion 32 on a fastener 16, which has wrenching flats 34. The intermediate portion 32 is integrally formed with the fastener and may not be moved along the fastener, thereby limiting the position of the bone plate relative to the fastener. This would require the fastener to be adjusted in order to adjust the height of the bone plate above a vertebrae, once the fastener has been positioned within the vertebrae. In contrast to the present invention, which simply allows the positioner or positioning means to be adjusted while the bone fastener remains in the same position relative to the vertebral body. Thus, Applicant asserts that newly amended independent claims 25 and 30 as well as their dependent claims are in condition for allowance over the art cited.

**REJECTION - 35 U.S.C. §102(b) - LIN**

Claims 1-13, 16-18 and 25-27 are rejected under 35. U.S.C. §102(b) as being anticipated by U.S. Patent Nos. 5,613,968 to *Lin*. Similar to *Schluzas*, *Lin* discloses a protruding edge 321 that is integrally formed on a double threaded screw 300. The protruding edge 321 similar to the intermediate portion of *Schluzas* may not be maneuvered relative to the bone fastener and rather is fixed to the bone fastener. This limits *Lin* in that the height of bone plate, or in this case, a rod, relative to a vertebral body may not be adjusted without removing the bone fastener from the vertebrae or further inserting the bone fastener into the vertebral body. Thus, for arguments consistent with those made with regard to

*Schluzas*, Applicant asserts that newly amended claim 1 as well as claim 25 and their respective dependent claims are in condition for allowance over the art cited.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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